Supreme Court, U.S.
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No. 01-1761

IN THE

Supreme Court of the United States

COOPER TIRE & RUBBER COMPANY,

Petitioner,

v.

TRUDYS TUCKIER, Individually and as Administratrix of the Estate of Laura Dawn Tuckier, Deceased, and as Representative of the Wrongful Death Beneficiaries,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Is the decision of the Mississippi Supreme Court upholding the punitive damages award in this case inconsistent with the requirement announced in *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), that appellate courts should review *de novo* trial court determinations of the constitutionality of punitive damage awards, when the state court thoroughly and independently assessed the sufficiency of the evidence to support the punitive damage award and the amount of that award, but did not cite *Leatherman*?

2. Is there any reason for this Court to reconsider its decision in *Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71 (1988), upholding the constitutionality of Mississippi's Appeal Penalty Statute, Miss. Code Ann. § 11-3-23, when there has been no change in that statute or any other significant legal developments?

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A Mississippi jury determined that Cooper Tire & Rubber Company ("Cooper Tire") acted with actual malice or gross negligence which evidences a willful, wanton or reckless disregard for the safety of others, when it knowingly used bad stock in manufacturing tires. That disregard placed the public at significant risk and led to the death of Laura Tuckier. Ms. Tuckier lost control of her Ford Bronco II when her rear tire tread separated. After the collision, an eight-inch strip of tread was found partially stripped from the tire. Three of four tires on the Tuckier vehicle were found to be defective. As established by forensic evidence at trial, the tire tread separated for lack of a chemical bond — typical when bad stock is used. The Tuckiers also presented substantial evidence, which the jury credited, that Cooper Tire knew that it was using defective materials in its tires and yet continued to do so. The jury returned a verdict in the Tuckiers' favor and determined that they had sustained $485,000 in compensatory damages, 68 percent of which was attributable to Cooper Tire. Following the verdict on liability, the trial court determined, as required by Mississippi statute, Miss. Code Ann. § 11-1-65, that the issue of punitive damages should be submitted to the jury. After a further presentation by the parties and additional instructions, the jury awarded $3 million in punitive damages against Cooper Tire.

Following the jury's verdict, the trial court evaluated the factors in Section 11-1-65(1)(f)(ii) and determined that the punitive damages award was reasonable, was rationally related to the purposes of punishing Cooper Tire's misconduct and of deterring its repetition, and was not excessive. App. 33. After a careful, thorough, and independent evaluation of the evidence, the Mississippi Supreme Court affirmed.

When, as here, fair procedures were followed, "a judgment that is a product of that process is entitled to a strong presumption of validity." *TXO Prod. Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 457 (1993) (plurality opinion); *accord Honda Motor Co. v. Oberg*, 512 U.S. 415, 421 (1994). As explained below, there is no substantial federal question here for this Court to review, and therefore, this Court should deny the writ. The Mississippi Supreme Court conducted the exact type of independent evaluation of the punitive damages award that this Court contemplated in *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001). In addition, there is no reason for this Court to revisit the constitutionality of the Mississippi "penalty statute," Miss. Code Ann. § 11-3-23, which this Court upheld in *Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71 (1988).

REASONS FOR DENYING THE WRIT

I. THE MISSISSIPPI SUPREME COURT'S DECISION WAS CONSISTENT WITH *LEATHERMAN.*

A. In *Leatherman*, 532 U.S. at 431-36, this Court held that an appellate court considering whether a punitive damages award was excessive under the Due Process Clause must review de novo the trial court's application of the guideposts set forth in *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 574-85 (1996). Cooper Tire attempts to manufacture a federal question by arguing that the Mississippi Supreme Court "outright," "knowingly," and "unyieldingly" rejected this Court's decision in *Leatherman*, Cert. Pet. 8, 10, 12, and by claiming that the ruling below conflicts with *Leatherman*.[1]

1. The Mississippi Supreme Court followed *Leatherman* and applied de novo review in the case of *MIC Life Insurance Company* (Cont'd)

The Mississippi Supreme Court's decision in this case creates no conflict among the state courts or with *Leatherman* itself. Nor is there a conflict among the state courts, as the petition itself documents. Cert. Pet. 10-12. Cooper Tire impugns the Mississippi Supreme Court by arguing that it deliberately ignored *Leatherman*. It did not. What did happen is that Cooper Tire sat on its rights for the eight months following the *Leatherman* decision, before the state court's decision in January 2002.[2] Rule 28(j) of the Mississippi Rules of Appellate Procedure permits parties to bring "pertinent and significant authorities" to the attention of the court after briefing, but Cooper Tire said nothing about the decision until its motion for rehearing in January 2002. App. 71-77. Although Cooper Tire reads a flagrant disregard for this Court's authority into the Mississippi Supreme Court's denial of its motion for rehearing, App. 34, that denial indicates nothing more than that the court saw no need to reconsider its decision in light of *Leatherman* or the other arguments advanced in the motion. *See Townsend v. Sain*, 372 U.S. 293, 314-15 (1963) (a federal court may properly assume that a state court applied correct standards of federal law to the facts, in the absence of evidence to the contrary), *overruled in part on other grounds by Keeney v. Tamayo-Reyes*, 504 U.S. 1 (1992); *accord Marshall v. Lonberger*, 459 U.S. 422, 433 (1983).

(Cont'd)

and General Motors Acceptance Corporation v. Bettye Hicks, Individually and as Administratrix of the Estate of David E. Hicks, Deceased, No. 1998-CT-01217-SCT, wherein it stated "We review de novo a challenge to the constitutionality of the size of a punitive damages award", citing *Leatherman*.

2. *Leatherman* was announced on May 14, 2001 after briefing on Cooper Tire's appeal was complete, but eight months before the Mississippi Supreme Court's decision on January 10, 2002, affirming the verdict.

Review of the Mississippi Supreme Court's thorough opinion reveals why the reconsideration was unnecessary in light of *Leatherman* and also why there are no grounds for review by this Court. At the outset of the opinion, the Mississippi Supreme Court acknowledged the legal standards of the Mississippi punitive damages statute, Miss. Code Ann. § 11-1-65 (App. 36-38), citing both the "clear and convincing evidence" burden of proof, § 11-1-65(1)(a), and the statutory factors that a reviewing court must take into consideration in determining whether a punitive damages award is excessive. § 11-1-65(1)(f)(ii); *see* App. 21-22. As the court noted, the jury was instructed in accordance with these statutory factors. App. 22.[3] The statutory considerations set forth in Section 11-1-65(1)(f)(ii) are quite similar both to the guideposts described in *Gore* and the criteria used by the Alabama Supreme Court in determining whether a punitive damages award was excessive in *Haslip*, which this Court approved because they "ensure[d] that punitive damages awards are not grossly out of proportion to the severity of

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3. Although Cooper Tire attaches to its petition only one jury instruction regarding the burden of proof, App. 86, in fact, the jury received several instructions regarding punitive damages, including one that described the purpose served by punitive damages, Jury Instruction 3 ("The primary purpose of punitive damages it to punish the wrongdoer and deter similar misconduct in the future by the Defendant and others while the purpose of compensatory damages is to make the Plaintiffs[] whole."), and another instruction listing the statutory considerations listed in § 11-1-65(1)(f)(ii). Jury Instruction 5. These instructions placed considerably more constraints on the jury's discretion than the Alabama instructions this Court found adequate in *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1, 19-20 (1991). In any event, Cooper Tire did not object to the jury instructions on punitive damages before they were given in the trial court; therefore, any argument regarding the adequacy of those instructions has been waived. *See* Miss. R. Civ. P. 51(b)(3).

the offense and have some understandable relationship to compensatory damages." 499 U.S. at 22.

After citing the governing legal standards, the Mississippi Supreme Court addressed in a thoughtful and comprehensive manner why the evidence supported the jury's finding that the Tuckiers had proved by "clear and convincing evidence" that Cooper Tire had "acted with actual malice, gross negligence which evidences a willful, wanton or reckless disregard for the safety of others." App. 22-23.[4] The court determined that the Tuckiers had proved at least "willful, wanton or reckless disregard" for the safety of others through former Cooper Tire employees who testified that they had personal knowledge that the company used bad stock in manufacturing tires; the court properly credited the jury's factual determination that these witnesses were credible and persuasive. Their testimony was corroborated by expert testimony establishing that Cooper Tire had used bad stock in manufacturing Laura Tuckier's tires. App. 23.

Having determined that the evidence was sufficient to justify submitting the question of punitive damages to the jury, the Mississippi Supreme Court examined the statutory factors to determine if the $3 million award — approximately six times the size of Laura Tuckier's total compensatory damages — was excessive. The court relied, first, upon the degree of reprehensibility of Cooper Tire's conduct, "the most important indicium of the reasonableness of a punitive damages award." *Gore*, 517 U.S. at 575. The court reasoned that Cooper Tire had acted reprehensibly in knowingly using

4. Although not required by the Due Process Clause, *Haslip*, 499 U.S. at 23 n.11, this Court has recognized that the "clear and convincing evidence" standard of proof is "an important check against unwarranted imposition of punitive damages." *Oberg*, 512 U.S. at 433.

bad stock, which displayed a "willful, wanton or reckless disregard" for the safety of others that led to an individual's death. App. 23. The court also determined that the ratio between the punitive damages award and the actual harm to the plaintiff was supported by sufficient evidence and Mississippi precedents and was consistent with *Gore*. App. 23-24. Finally, the Mississippi Supreme Court considered the financial condition and net worth of Cooper Tire and concluded that the $3 million award, which represented less than one percent of the company's net worth, was not excessive.[5]

Although the Mississippi Supreme Court did not cite *Leatherman* or use the magic words "de novo" in its decision, it is plain that the court conducted the "independent

5. The court did not address the third *Gore* guidepost, a comparison of the punitive damages award and the civil or criminal penalties that could be imposed for comparable misconduct, 517 U.S. at 583-86, but the comparison is not apt here where the manufacturer is accused of knowingly or recklessly manufacturing a defective product that results in the death of a consumer. Redress for deaths stemming from defective products are typically achieved through the tort system rather than through a scheme of legislatively determined fines or penalties. As the Ohio Supreme Court explained in *Wightman v. Consolidated Rail Corp.*, 715 N.E.2d 546 (Ohio 1999), *cert. denied*, 529 U.S. 1012 (2000), *Gore* and its civil penalties are a "world away" from a wrongful death case where there are no comparable statutory fines and where the "far more relevant civil 'penalty'" is "the potential civil damage award in a lawsuit." *Id.* at 555. As the court reasoned there, Conrail could expect "extraordinary civil damages" from the collisions it causes, yielding civil damage awards in the millions of dollars. These civil damage awards, in addition to criminal penalties for manslaughter, provided the closest analogy and bolstered the court's conclusion that a punitive damage award more than 15 times the size of the compensatory damage award and 6,250 times the size of the property damage loss was not constitutionally excessive. *Id.*

examination of the relevant criteria" that *Leatherman* demands. 532 U.S. at 435. Absent from the opinion is any indication that the state high court deferred to the trial court; instead, the opinion reflects that the court conducted an independent evaluation of these issues based on the record.[6] Nor is this case the only one in which the Mississippi Supreme Court has addressed whether a punitive damages award comports with federal due process standards. In *Paracelsus Health Care Corp. v. Willard*, 754 So. 2d 437, 444-45 (Miss. 1999), the court upheld punitive damages verdicts only after a careful consideration of each of the *Gore* guideposts. Rather than thumb its nose at this Court as Cooper Tire charges, the Mississippi Supreme Court conscientiously applied this Court's precedents.

Far from "jar[ring] one's constitutional sensibilities," *Haslip*, 499 U.S. at 18, the punitive damages award here is quite modest when considered in light of both "the enormity of [Cooper Tire's] offense," *Gore*, 517 U.S. at 575 (citation omitted), and the magnitude of the *potential harm* that could have been inflicted (and might still be inflicted) as a result of Cooper Tire's misconduct. Cooper Tire's potential compensatory damages exposure, given the thousands, if not millions, of tires it manufacturers each year, dwarfs the $3 million punitive damages award in this one case. *See TXO*, 509 U.S. at 462 (upholding 526-to-1 ratio of punitive damages to actual damages

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6. It is also worth noting that, although in its motion for judgment notwithstanding the verdict or for a new trial, Cooper Tire asserted — in a laundry list of grounds for a new trial — that the punitive damages award violated its constitutional due process rights, Cooper Tire's motion included no substantive discussion of this point or citation to any supporting case law, such as the *Gore* decision. Thus, it is not surprising that neither the trial court's order denying the post-trial motions nor the judgment itself, App. 32-33, cited federal case law.

because "shock dissipates" when one considers that the ratio of punitive damages to the *potential* damages was likely only 10-to-1) (plurality opinion).

B. Cooper Tire attempts to parlay a straightforward state-law question of applying the Mississippi statute to the facts into a federal constitutional question, by urging this Court to review whether Cooper Tire was eligible under the Mississippi punitive damages statute for a punitive damages award *at all*, regardless of the amount of that award.

There is no federal question to review. Only state courts may authoritatively construe state statutes. *Gore*, 517 U.S. at 577. Even if the Mississippi Supreme Court incorrectly applied the state statute to these facts, which is not the case, "[a] violation of a state law 'reasonableness' requirement would not, however, necessarily establish that the award is so 'grossly excessive' as to violate the Federal Constitution." *TXO*, 509 U.S. at 458 n.24 (plurality opinion). Indeed, this Court has never held that whether a state court has correctly applied its own state statute in determining whether a defendant's conduct is *eligible at all* for a punitive damages award implicates federal due process standards, but has held only that "grossly excessive" awards may be sufficiently arbitrary to violate due process. *See, e.g.*, *Leatherman*, 532 U.S. at 434; *Gore*, 517 U.S. at 568; *Oberg*, 512 U.S. at 421; *TXO*, 509 U.S. at 455 (plurality opinion). And although this Court has recognized the importance of judicial review of punitive damages awards for reasonableness, *see Oberg*, 512 U.S. at 420-35, a review that the Mississippi Supreme Court undertook in this case, it has never held that the *correctness* of a state appellate court's determination that a defendant has met the criteria for imposition of punitive damages under state law presents a federal constitutional question.

The implications of such an extension of this Court's precedents are staggering. Cooper Tire's proposed approach would federalize the entire sphere of punitive damages law, and only this Court would be able to police the sufficiency inquiry. *See Gore*, 517 U.S. at 586 n.41 (citing *id.* at 613 (Ginsburg, J., dissenting)). There is no warrant for such a dramatic intrusion into state law. Cooper Tire offers no federal standard to govern the determination of legal sufficiency for fifty states' regimes governing punitive damages, but requests that this Court grant certiorari to direct the Mississippi Supreme Court to write an opinion addressing whether the evidence satisfied all state-law requirements for imposing punitive damages liability. Cert. Pet. 22. Not only does that request present no federal question, but it would serve no purpose, as the Mississippi Supreme Court has already done precisely that.

II. THERE IS NO REASON FOR THIS COURT TO REVISIT *BANKERS LIFE & CASUALTY CO. v. CRENSHAW.*

Cooper Tire also urges this Court to review whether the Mississippi "penalty statute," Miss. Code Ann. § 11-3-23, which imposes a 15 percent penalty on parties who appeal unsuccessfully from money judgments, violates the Equal Protection Clause. In *Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71 (1988), this Court upheld the constitutionality of this exact statute, concluding that the statute easily satisfied rational-basis review by discouraging frivolous appeals, providing "a measure of compensation" for the successful appellee, protecting the integrity of judgments by discouraging appellants from prolonging the litigation merely to "squeeze a favorable settlement out of an impecunious" appellee, sending a signal to litigants that

the trial itself is "the centerpiece of the litigation," and by furthering the state's interest in conserving judicial resources. *Id.* at 81-82 (citing *Walters v. Inexco Oil Co.*, 440 So. 2d 268, 274-75 (Miss. 1983)).

Nothing has changed since *Crenshaw*. No decision by this Court has cast doubt on *Crenshaw*'s continued vitality, and there is no conflict in state-court authorities. Cooper Tire relies heavily on this Court's earlier ruling in *Lindsey v. Normet*, 405 U.S. 56 (1972), but this Court explained at length in *Crenshaw* why *Lindsey* was inapposite. *See Crenshaw*, 486 U.S. at 83-85.

Cooper Tire also argues that post-*Crenshaw*, Mississippi has promulgated rules and statutes authorizing costs, interests, and sanctions to address frivolous appeals, rendering the penalty statute unnecessary. Cert. Pet. 28-29. But this authority existed in 1988 when *Crenshaw* was decided. Mississippi appellate rules provided then and now that if a judgment is affirmed, costs shall taxed against the appellant unless otherwise ordered. *Compare* Miss. R. App. P. 36(a) (App. 49), *with* Miss. Sup. Ct. R. 36(a) (1988). In 1988, as today, Mississippi Supreme Court Rule 37 and Miss. Code Ann. § 75-17-7 provided for interest on judgments, although it is important to note that, according to the Mississippi Supreme Court, the interest and penalty statutes serve different purposes. *See Walters*, 440 So.2d at 275 & n.11.[7]

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7. Mississippi Rule of Civil Procedure 11(b), which authorizes sanctions for frivolous pleadings or motions filed in the trial court, cited by Cooper Tire, Cert. Pet. 29, likewise was adopted before this Court's decision in *Crenshaw*.

As for the Mississippi Supreme Court's authority to award sanctions for taking frivolous appeals, Mississippi Supreme Court Rule 38 was adopted in 1987 and became effective in early 1988, before this Court's decision in *Crenshaw*. Cert. Pet. 28. The Court was aware of this provision because Justice Blackmun cited it in his lone dissent. *See* 486 U.S. at 92 n.4. Nor does the existence of Rule 38 render the penalty statute unnecessary. Rule 38 applies only to those civil cases in which the penalty statute, Miss. Code Ann.§ 11-3-23, *does not apply. See* Miss. R. App. P. 38 (App. 50) & Comment ("This rule supplements and does not supplant the statutory 15% penalty now provided by Miss. Code Ann. § 11-3-23 (1991)."). The fact that the Mississippi appellate courts have the authority under Rule 38 to impose sanctions for frivolous appeals not covered by the penalty statute, and have exercised that authority, *see, e.g.*, *Foster v. Foster*, 788 So. 2d 779, 783-84 (Miss. Ct. App. 2000), only further undermines Cooper Tire's complaint that the penalty statute discriminates against those who appeal a money judgment or other judgment susceptible to monetary valuation, Cert. Pet. 29 — a claim that this Court already rejected in *Crenshaw*. 486 U.S. at 84.[8]

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8. Cooper Tire also claims that the statute's application here violates federal due process principles because the $500,000 penalty to be imposed here is approximately one-and-a-half times the portion of the compensatory damages award attributable to Cooper Tire. Cert. Pet. 26 n.4. In *Crenshaw*, however, the appeal penalty of $243,000 was more than 10 times the size of the $20,000 compensatory damages award. *See* 486 U.S. at 75.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

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